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No. 295

In the Supreme Court of the United States

OCTOBER TERM, 1958

CHEMICAL, STATES DRIVERS COUNCIL, and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ETC., LOCAL NO. 107, PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 266

CENTRAL STATES DRIVERS COUNCIL, and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ETC., LOCAL NO. 147, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 11-12) is reported at 257 F. 2d 166. The Board's Decision and Order (Pet. 13-20) are reported at 121 NLRB No. 92.

JURISDICTION

The judgment of the Court of Appeals was entered on May 7, 1959 (Pet. 47), and a petition for rehearing was denied on June 25, 1959 (Pet. 51). The petition for a writ of certiorari was filed on

July 31, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the National Labor Relations Board, in ordering two unions to cease and desist from applying secondary strike pressure directed against not only the particular primary employer involved but also against other similar primary employers in the same state, acted within its allowable discretion to select an appropriate remedy.

2. Whether the court below has misapplied the standard of judicial review of Board orders enunciated in *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) in addition to those set forth in Appendix E of the petition (Pet. 52), are as follows:

Sec. 10(c)

> * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *.

* * *

Sec. 10(e)

The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

* * * *

STATEMENT

A. The Board's findings and conclusions

The Board found that petitioners (two labor unions), in violation of Section 8(b)(4)(A) of the National Labor Relations Act, induced and encouraged employees of Bos Lines, Inc., and of Burlington Truck Lines, Inc., simultaneously to engage in a strike at the Des Moines, Iowa, terminals of those

companies, for the purpose of forcing those companies to cease doing business with Clark Bros. Transfer Company and other nonunionized motor truck common carriers. The underlying facts as found by the Board and shown by the evidence, may be summarized as follows:

1. *Background*

In September 1955, Teamsters Local 554 (which is not involved in this case) wrote Clark Bros. Transfer Company that it represented the employees at Clark's Omaha, Nebraska, terminal, and requested a bargaining conference (R. 86; 17).[1] Pursuant to this request, Clark met with Albert Parker, then secretary-treasurer of Local 554, and Richard Kavner, a representative of the Central States Drivers Council, one of the petitioners here (R. 86-87; 17-18). Kavner, who is also involved in the instant case, requested the negotiation of a contract covering employees at both Clark's Omaha and Norfolk, Nebraska, terminals (R. 87; 17-19). During the conference, Kavner told Clark about a Teamsters' program to organize all the nonunion truck lines in Nebraska and stated that Clark "had from six months to two years to survive without a contract" (R. 87; 19). Clark nevertheless expressed doubt as to the Teamsters' majority status and declined recognition (R. 87; 19-20). The Union also unsuccessfully sought recognition from Coffey's Transfer Co., another common carrier having its terminal in Omaha.

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[1] "R" refers to the Joint Appendix filed with the court below.

Thereafter Local 554 and representatives of the Central States Drivers Council, with which the Local was affiliated, established picket lines not only at the Omaha terminals of Clark and Coffey but also at the premises of carriers with whom Clark and Coffey interlined [2] freight, and successfully encouraged and induced union employees of those carriers to refuse to handle Clark's and Coffey's freight. Upon charges filed against Local 554, the Board found that such inducement constituted secondary strike pressure in violation of Section 8(b)(4)(A) and enjoined Local 554 from engaging in such activities against Clark and Coffey. *International Brotherhood of Teamsters, etc., Local No. 554*, 116 NLRB 1891. The court below enforced that order as modified. *International Brotherhood of Teamsters, etc., Local No. 554* v. *National Labor Relations Board*, 262 F. 2d 456.

2. *The violation in the instant case*

During the above period and the period of time involved in the instant case, a number of midwest interstate carriers were represented by a labor relations advisor, John Bridge. During July or August 1956, Bridge informed operations manager Osborn of Bos Lines, Inc. that the latter was violating its bargaining agreement by interlining freight with the "so-called short line carriers in Omaha," naming, among others, Clark Bros. Transfer Company, Roman

[2] The term "interline" refers to receiving freight from interstate motor carriers for delivery to its destination or delivering freight to such carriers for further transportation.

Motor Freight and Ford Storage and Transfer Company (R. 94; 60-62, G.C. Exh. 1-C). Later, in October 1956, Bridge again called Bos Lines, Inc., and warned its vice-president, Gerald Mattox, that if Bos did not stop interlining with nonunion carriers in Omaha, it could be shut down at other terminals (R. 94; 59-60). Between January 15 and 30, 1957, Bridge again called Mattox and warned him that if Bos did not stop interlining with Roman Transfer Company, it "would be shut down at some other terminal" (R. 94; 59-60).

On January 29, 1957, W. F. Clark, a partner in Clark Bros. Transfer Co., testified at a hearing before the Interstate Commerce Commission. Richard Kavner who, as a representative of the Drivers Council, had previously attempted to negotiate a contract with Clark, was also present at this hearing (R. 87; 21-22). During the course of the hearing, W. F. Clark listed the interstate firms with which his firm interlined. Among these he named Burlington Truck Lines, Inc. and Bos Lines, Inc. (R. 87-88; 21-22).

Following W. F. Clark's testimony on January 29, Kavner made several long distance telephone calls (R. 95; 22-26), including one to James R. Hoffa,[3] one to Bridge on January 29, and a call on the morning of January 30 to Richard Conn, president of petitioner Local 147. The employees of Bos Lines, Inc. and Burlington Truck Lines, Inc. were members of Local 147 (R. 95; 49, 62-63).

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[3] Hoffa, as chairman of the Negotiating Committee of Drivers Council, had signed the then current Central States Area Agreement (G.C. Exh. 2, p. 61, and G.C. Exh. 3, p. 49).

On January 30, 1957, the day after W. F. Clark testified before the Interstate Commerce Commission that his company was interlining freight with Bos and Burlington, and within an hour of Kavner's call to Conn, the terminals of those carriers were closed down by walkouts (R. 88; 47-49, 62). The drivers of both those companies walked off their jobs without notice to their employer and without having indicated the existence of any grievance which might have accounted for their action (R. 88-91; 48-49, 62).

Attempts by the companies to ascertain the reason for the walkouts were unsuccessful. When Gerard Vignaroli, Burlington's terminal manager at Des Moines, asked his drivers why they were punching out, he was told that "they were told to clock off" (R. 88; 48-49). He immediately called Conn, president of Local 147, to ask the reason for the walkout. Conn said that he had just heard about it, did not know the reason for it, and would see what he could do to get the men back to work (R. 88-89; 49). Conn called him back and, still professing not to know the cause of the walkout, told Vignaroli that the union had not authorized the walkout and that the men would return to work the following morning (R. 89; 49-50). The drivers did so (R. 90; 50).

As soon as Leigh Osborn, operations manager of Bos Lines, Inc., heard of the walkout on his lines, he attempted repeatedly during the day to ascertain its cause. After trying to reach officials of Local 147, he called Carl Keul, an International representative with jurisdiction over Minnesota and Iowa, and later in the day called Kavner, whom he "knew by

reputation to be the trouble shooter for Hoffa" (R. 90-91, 71). Both Keul and Kavner disclaimed knowledge of the walkout; both referred him to John Bridge for information (R. 90-91; 63-65, 66-67).

When Osborn indicated to Kavner that he intended to discharge drivers for participating in unauthorized walkouts, as provided by his contract with the union (R. 91; 66-67), Kavner called the strike "authorized" and instructed Osborn to call Conn and have the drivers return to work (R. 92; 67-69). No discharges were effected and the drivers returned to work (R. 92; 70).

On the evening of the walkout or the day after, Walter Martin, manager at the Bos terminal in Omaha, Nebraska (where Clark had its headquarters), inquired of his home office as to "what the trouble was in Des Moines" and was referred to Kavner (R. 92-93; 44-45). Martin called Kavner and asked him the reason for the Des Moines walkout. Kavner replied, "Well, hasn't John Bridge warned your company of doing business with Romans and Clarks?" (R. 93; 45-46).

On February 5 and again on February 20, following the sudden walkouts, a number of union trucking firms attended meetings in Omaha called by John Bridge, the labor relations consultant to whom Kavner had talked by long distance telephone on the night before the walkouts described above (R. 94-95; 38-39). Martin of Bos Lines, Inc. was present at Bridge's invitation, although Bos was not then represented by Bridge (R. 95; 42). At these meetings the so-called "hot cargo" clauses of the truckers' contracts

and the problems presented by the union carriers' interlining with Clark and other nonunion carriers were discussed (R. 94-95; 35-37, 39-40). A committee reported on the possibility of interlining with union rather than nonunion carriers in Nebraska. It was decided that the committee should meet with Kavner to discuss the means by which the services of union carriers could be utilized to the maximum extent (R. 37). "The idea was to cut down the haul of non-unionized carriers, including Clark, to the shortest distance possible" (R. 95; 41). During these meetings, Bridge accused one of the union carriers, Wilson Truck System, whose terminal manager was present, of interlining freight with Clark at Omaha and pointed out that if Wilson "continued to interline freight with any of these nonunion carriers, there could be reprisals" at its out-of-state terminals (R. 95; 35-36). When Bridge, who apparently did not know Martin personally, learned his identity, he pointed Martin out as a man who could testify "that he was shut down" for using nonunion carriers (R. 95; 42-44).

The Board, in agreement with the Trial Examiner, found on the basis of the foregoing facts that the General Counsel had introduced evidence sufficient to establish a *prima facie* case of a violation of Section 8(b)(4)(A) of the Act on the part of petitioners; and that petitioners failed to introduce any evidence and thereby to rebut the *prima facie* case against them although, if such evidence existed, it would be within their knowledge and control. Accordingly, the Board held that the Council and Local

117 violated Section 8(b)(1)(A) by inducing and encouraging the employees of Bos and Burlington to engage in strikes with an object of forcing these companies to cease doing business with Clark "and other nonunionized motor truck common carriers" (R. 76-78; 96-100).

B. The Board's Order

The Board's order (R. 78-82) requires petitioners to cease and desist from inducing or encouraging employees of Bos or Burlington or any employer other than Clark to engage in a strike or concerted refusal in the course of their employment to transport or otherwise handle any goods where an object thereof is to force or require Bos, Burlington, or any other employer or person to cease doing business with Clark "or any other similar common carrier." Affirmatively, the order requires petitioners to post appropriate notices and requires petitioner Council to direct each of its constituent or members locals to post such notices.

C. The decision of the Court of Appeals

The Court of Appeals, in a *per curiam* opinion (Pet. 11-12), affirmed the Board's findings as adequately supported by the record and enforced the Board's order. In its opinion the court explained that the phrase in the order "or any other similar common carrier" was to be construed to mean any "other nonunionized motor truck common carriers" in Nebraska (Pet. 12, 51).

ARGUMENT

1. Petitioners contend, principally (Pet. 5-6), that the order is too broad because it prohibits secondary strike pressure not only against Clark Bros., the main employer involved in this case, but also against any other similar common carrier in Nebraska. It is settled, however, that the Board may fashion its order to enjoin not only the particular unfair labor practice found but also like or related acts which may be anticipated from the wrongdoer's past misconduct. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 436. The scope of such orders "depends on the facts of each case and a judgment as to the extent to which a particular violator should be fenced in." *Federal Trade Commission* v. *Mandel Bros., Inc.*, 359 U.S. 385, 392.

In the instant case the Board found (R. 99) that petitioners engaged in secondary strike pressure for the purpose of forcing the two union carriers "to cease doing business with Clark and other nonunion carriers," and that a representative of petitioner Central States had stated that the teamsters had a "program to organize all of the nonunion trucklines in Nebraska * * *" (R. 87). On the basis of those findings, which were upheld by the Court of Appeals and are not here challenged, we submit that the Board did not abuse its "wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices" shown by the record (*Jacob Siegel Company* v. *Federal Trade Commission*, 327 U.S. 608, 611), in concluding that an adequate cease-and-desist

order should prohibit secondary pressure not only against Clark but also against "other nonunion carriers" in the state. The cases relied on by petitioners (Pet. 6), in which various courts of appeals have treated "similar" orders differently, do not involve any conflict in principle, but reflect merely the different "facts of each case" (*Mandel Brothers* case, *supra*).[4]

Petitioners' further complaint that the order is too vague is without substance. Against the background of this case, petitioners can have "no doubt of the evils complained of and sought to be corrected" (*Zenith Radio Corp.* v. *Federal Trade Commission*, 143 F. 2d 29, 31 (C.A. 7)), and should experience no serious difficulty in determining who are "other similar non-unionized common carriers in Nebraska."

2. Petitioners' contention (Pet. 8-9) that the court below misconstrued the scope of judicial review of Board orders as enunciated in *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, likewise presents no substantial question. Petitioners do not contend that the Board's order in the instant case lacks substantial support in the record as a whole. The language of the court below to which petitioners take exception merely involves a matter of phraseology rather than any misapplication or departure from the proper standard of review.

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[4] Thus, in *Truck Drivers Local No. 728* v. *National Labor Relations Board*, 265 F. 2d 439, 444 (C.A. 5), the court explicitly modified the order "[o]n the basis of the record before us * * *."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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August 1959.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1959 518185 222